SUPREME COURT, U. S.

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No. 715

In the Supreme Court of the United States

OCTOBER TERM, 1967.

S. LAWRENCE KAHN,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Seventh Circuit

REPLY BRIEF FOR PETITIONER

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This petitioner, S. Lawrence Kahn, prays, in view of the extraordinary position taken by the co-defendants in their Petition, number 718 this term of Court, that this Reply be accepted by the Court in its consideration of his case.

Petitioner Kahn, in filing this Reply Brief, does not waive any of the matters, things and arguments contained in his original Petition.

I.

If the object be, as this Petitioner believes, that the ultimate goal of reviewing Courts under the judicial system of the United States, that each litigant receives a fair trial on the issues raised, then this Petitioner believes that from the outset of the prosecution he was not accorded the fair trial that he was entitled to under the Constitution.

Prior to trial Counts V, VI, VIII, IX, X and XI were dismissed as to Petitioner Kahn, yet evidence was admitted under the conspiracy count, which the Solicitor indicates in his Brief, footnote 3, page 3, was a major part of the conspiracy charge, as to Kahn.

Petitioner Kahn then found himself attempting to defend in a case where his co-defendants had been his lawyers in most of the matters presented as evidence in the Government's case. This resulted in the defenses being patently conflicting, yet the trial Court refused to grant a severance. The resulting trial was a continual attempt by the defendants Sachs and Curran (Petition # 718, pending this term) to exculpate themselves at the expense of Kahn. This Petitioner sought a severance constantly throughout the trial and although both the Attorney General and the Solicitor recognize in their briefs that the evidence showed Sachs and Curran were Kahn's attorneys, they argue that the burden was on him to show this and that he was not entitled to the instruction which he sought on this phase of his defense.

II.

The Solicitor gratuitously states there is no merit in Petitioner Kahn's points concerning the adequacy of the indictment, and in support of his argument concerning the conspiracy cites *Hagner* v. *United States*, 285 U.S. 427, 431. However, in this case this Court did say that the indictment must "* * * contain the elements of the offense intended to be charged", and does not as the Solicitor would argue hold that any vague and insufficient writing can stand as an indictment.

Respectfully submitted,

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S. Lawrence Kahn